



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2019-0163]

RIN 1625-AA08

Special Local Regulation; Ohio River, Louisville, KY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation for all navigable waters of the Ohio River from mile marker (MM) 597.0 to MM 607.0. This action is necessary to provide for the safety of life on these navigable waters near Louisville, KY, during the “Thunder over Louisville” event. Entry into, transiting through, or anchoring within this regulated area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

DATES: This rule is effective from 11 a.m. on April 12, 2019 through 11:59 p.m. on April 13, 2019. The rule will be enforced from 11 a.m. through 6 p.m. on April 12, 2019, and from noon through 11:59 p.m. on April 13, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0163 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule,

call or email MST2 Joshua Herriott, Waterways Department Sector Ohio Valley, U.S. Coast Guard; telephone 502-779-5343, email SECOHV-WWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
<i>FR</i>	<i>Federal Register</i>
MM	Mile Marker
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because it is impracticable. We must establish this special local regulation by April 12, 2019 and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the *Federal Register*. Delaying the effective date of this rule would be contrary to the public interest because immediate action is necessary to prevent possible loss of life and property.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041(a). The COTP has determined that potential hazards associated with “Thunder over Louisville” event will present a safety concern on all navigable waters of the Ohio River extending from mile marker (MM) 597.0 to MM 607.0. The purpose of this rule is to ensure the safety of life and vessels on these navigable waters before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a temporary special local regulation that will be enforced from 11 a.m. to 6 p.m. on April 12, 2019 and from noon to 11:59 p.m. on April 13, 2019. The temporary special local regulation will cover all navigable waters of the Ohio River from MM 597.0 to MM 607.0. The duration of the special local regulation is intended to ensure the safety of waterway users on these navigable waters before, during, and after the scheduled event. No vessel or person is permitted to enter the special local regulated area without obtaining permission from the COTP or a designated representative. All persons or vessels desiring entry into or passage through the area must request permission from the COTP or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

Recreational vessels are permitted to transit the regulated area, but are restricted to the Indiana side of the navigation channel. There shall be no anchoring or loitering in the navigation channel. There is a no-entry zone starting at Ohio River Mile Marker (MM) 602.7 through MM 607.0. Recreational vessels transiting into and away from this area are restricted to the slowest safe speed creating minimum wake.

The COTP may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the special local regulation. This rule impacts ten miles of the Ohio River over two days. Entry into the regulated area will be prohibited from 11 a.m. through 6 p.m. on April 12, 2019 and from noon through 11:59 p.m. on April 13, 2019 from Ohio River MM 597.0 to MM 607.0, unless authorized by the COTP or a designated representative. Moreover, the Coast Guard will issue written Local Notice to Mariners and Broadcast Notice to Mariners via VHF-FM marine channel 16 about the temporary special local regulation that is in place.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit this temporary special local regulation, may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulated area lasting seven hours on April 12, 2019 and approximately 12 hours on April 13, 2019 on all navigable waters extending ten miles of the Ohio River. It is categorically excluded from further review under paragraph L61 of Figure 2-1 of the Commandant Instruction. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under

ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.35T08-0163 to read as follows:

§ 100.35T08-0163 Special Local Regulation; Ohio River, Louisville, KY.

(a) Location. All navigable waters of the Ohio River from mile marker (MM) 597.0 to MM 607.0 in Louisville, KY.

(b) Effective period. This section is effective from 11 a.m. on April 12, 2019 through 11:59 p.m. on April 13, 2019.

(c) Enforcement period. The section will be enforced from 11 a.m. through 6 p.m. on April 12, 2019, and from noon through 11:59 p.m. on April 13, 2019.

(d) Special local regulations. (1) In accordance with the general regulations in §100.35, entry into this area is prohibited unless authorized by the Captain of the Port Sector Ohio Valley (COTP) or a designated representative.

(2) Recreational vessels are permitted to transit the regulated area, but are restricted to the Indiana side of the navigation channel. There shall be no anchoring or loitering in the navigation channel. There is a no-entry zone starting at Ohio River Mile Marker (MM) 602.7 through MM 607.0. Recreational vessels transiting into and away from this area are restricted to the slowest safe speed creating minimum wake.

(3) The COTP may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(4) All persons or vessels desiring entry into or passage through the area must request permission from the COTP or a designated representative. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

Dated: March 29, 2019.

M. B. Zamperini,
Captain, U.S. Coast Guard,
Captain of the Port Sector Ohio Valley
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